IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA v. JAMES KERR SCHLOSSER	CRIMINAL NO. 16-0178

MEMORANDUM

SCHMEHL, J. **MAY 12, 2017**

Before this Court is Defendant James Kerr Schlosser's ("Schlosser") post-trial Motion to Arrest Judgment pursuant to Fed. R. Crim. P. 34, Motion for a New Trial pursuant to Fed. R. Crim. P. 33, and Motion for Judgment of Acquittal pursuant to Fed. R. Crim. P. 29. The government filed opposition to the motions. Having read the parties' briefing, the Court will deny Schlosser's motions (Docket No. 61) (Docket No. 62) (Docket No. 64). Additionally, the Court orders Schlosser to cease and desist from filing any further *pro se* motions, as he is represented by counsel.

I. STATEMENT OF FACTS

On March 6, 2017, Defendant James Kerr Schlosser was found guilty of interfering with the administration of the internal revenue laws in violation of 26 U.S.C. § 7212(a) and willful failure to file a tax return for the year 2012 and 2013 in violation of 26 U.S.C. § 7203.

On March 20, 2017 Schlosser filed a *pro se* post-trial Rule 34 motion to arrest judgment for lack of subject-matter jurisdiction. On April 3, 2017, and before this

Court's ruling on Schlosser's Rule 34 motion, Schlosser's counsel filed a Rule 29 motion for judgment of acquittal and a Rule 33 motion for a new trial. Following the government's response to Schlosser's counseled post-trial motions, Schlosser filed a *pro se* reply to the government's response on April 19, 2017.[1] This Court will now address all three motions separately.

II. DISCUSSION

Defendant Schlosser moves to arrest the judgment of his criminal jury trial that concluded on March 6, 2017, which found him guilty on all three counts of the indictment: 1) interfering with the administration of the internal revenue laws in violation of 26 U.S.C. § 7212(a); 2) willful failure to file a tax return for the tax year 2012 in violation of 26 U.S.C. § 7203; and 3) willful failure to file a tax return for the tax year 2013 in violation of 26 U.S.C. § 7203.

Additionally, Schlosser moves this Court to grant a new trial and render a judgment of acquittal regarding Count I, violation of 26 U.S.C. § 7212(a). For the reasons stated below, this Court will deny Schlosser's *pro se* motion to arrest judgment (Docket No. 61) (Docket No. 64), as well as his counseled motion for new trial and judgment of acquittal on Count I (Docket No. 62).

A. MOTION TO ARREST JUDGMENT

Rule 34 of the Federal Rules of Criminal Procedure states that the court must arrest judgment if it does not have jurisdiction over the charged offense. Fed. R. Crim 34. However, this Court need not determine the validity of Schlosser's present motion to arrest judgment because his motion was filed *pro se* although he is currently represented

[1] Defendant Schlosser continues to submit a number of written *pro se* submissions although he is, and has been, represented by Lowell H. Becraft, Jr. This Court orders Mr. Schlosser to cease and desist from filing any further *pro se* motions, as he is represented by counsel.

by counsel. It is a long standing rule that motions filed by *pro se* litigants need not be considered in light of representation. "Issues that counseled parties attempt to raise *pro se* need not be considered except on direct appeal in which counsel has filed an Anders brief." *U.S. v. Essig*, 10 F.3d 968, 973 (3d Cir. 1993). Therefore, because the constitution does not confer the right to proceed simultaneously by counsel and *pro se*, Schlosser's motion to arrest judgment is denied.

B. MOTION FOR NEW TRIAL

Schlosser moves for a new trial arguing his constitutional rights to present a defense were violated. Because Schlosser's motion (Docket No. 62) was filed by his counsel, the Court will address its validity below.

A Motion for New Trial is governed by Rule 33 of the Federal Rules of Criminal Procedure, which states:

> **(a) Defendant's Motion.** Upon the defendant's motion, the court may vacate any judgment and grant a new trial *if the interest of justice so requires*. If the case was tried without a jury, the court may take additional testimony and enter a new judgment.

Fed. R. Crim. 33 (emphasis added). A district court "can order a new trial on the ground that the jury's verdict is contrary to the weight of the evidence only if it believes that there is a serious danger that a miscarriage of justice has occurred – that is, that an innocent person has been convicted." *United States v. Johnson*, 302 F.3d 139, 150 (3d Cir. 2002).

Under Federal Rule of Evidence 611, the court has full discretion to control the "mode and order" of examining witnesses and presenting evidence: 1) to avoid wasting time; 2) to make procedures effective for determining the truth; and 3) to protect the witnesses from harassment and undue embarrassment. FRE Rule 611; *see also United*

States v. Johnson, 496 F.2d 1131, 1135-36 (5th Cir. 1974) (finding trial court did not abuse its discretion because the evidence being introduced was cumulative and did not shed light on new facts not previously disclosed).

Furthermore, violating a defendant's right to introduce evidence could also violate the compulsory process clause which allows criminal defendants to secure favorable witnesses. U.S. Const. Amend. VI; *see also Government of Virgin Islands v. Mills*, 956 F.2d 443, 445 (3d Cir. 1992) (finding the compulsory process clause of the Sixth Amendment not absolute and requires a showing that the testimony would have been both material and favorable to the defense).

Here, Schlosser argues his constitutional rights were violated when he was denied the opportunity to defend himself and explain to the jury how and why he decided to "renounce" his United States citizenship, declare himself a "Sovereign Human Being," and ultimately skirt the federal tax laws. (ECF No. 62, at 7.) Schlosser's argument centers on the 1994 seminar, which was comprehensively analyzed at trial, and the fact that he was "denied the opportunity to tell the jury what others told him and was further prevented from showing the jury some of the relevant documents [relied upon]." (Id. at 1-6.) Schlosser claims he intended to testify as to what the other presenters told him at the various meetings he attended and was further prepared to produce documents detailing the information provided at these meetings. (Id. at 7.) Schlosser contends that this evidence would have persuaded the jury, beyond a reasonable doubt, that he did not willfully defraud the Government.

Schlosser cites a number of cases from several circuits relating to a defendant's right to offer the testimony of witnesses and compel their attendance if necessary, i.e.

compulsory process. (Id. at 8-13.) However, the compulsory process clause of the Sixth Amendment is not applicable in the instant case because Schlosser was not prevented from presenting a defense or calling witnesses, and he was clearly not prevented from admitting testimonial evidence regarding the 1994 seminar. The jury clearly understood the facts surrounding the seminar and what he was told there. The Court did not allow Schlosser to read to the jury voluminous information from the seminar, as it would have been duplicative and a poor use of judicial resources. In fact, Schlosser was only precluded from providing duplicative testimony in the form of the materials distributed at the 1994 seminar which were provided to the Court in Schlosser's motion for new trial.

The Eleventh Circuit in *Hurn*, cited by Schlosser, found that a court's exclusion of defendant's evidence could violate the Compulsory Process and Due Process guarantees in four different circumstances.[2] *U.S. v. Hurn*, F.3d 1359, 1362-65 (11th Cir. 2004). One such circumstance occurs when a defendant is precluded from introducing evidence that is not directly relevant to an element of the offense, "but makes the existence or non-existence of some *collateral matter* somewhat more or less likely, where that collateral matter bears a sufficiently close relationship to an element of the offense." *Id.* at1364 (emphasis added).

[2] The four circumstances in *Hurn* are: 1) a defendant must generally be permitted to introduce evidence directly pertaining to any of the actual elements of the charged offense or an affirmative defense; 2) a defendant must generally be permitted to introduce evidence pertaining to collateral matters that, through a reasonable chain of inferences, could make the existence of one or more of the elements of the charged offense or an affirmative defense more or less certain; 3) a defendant generally has the right to introduce evidence that is not itself tied to any of the elements of a crime or affirmative defense, but that could have substantial impact on the credibility of an important government witness; and 4) a defendant must generally be permitted to introduce evidence that, while not directly or indirectly relevant to any of the elements of the charged events, nevertheless tends to place the story presented by the prosecution in a significantly different light, such that a reasonable jury might receive it differently. *U.S. v. Hurn*, F.3d 1359, 1362-63 (11th Cir. 2004).

The court in *Hurn* relied on *United States v. Lankford*, a tax fraud case, where the district court prevented the introduction of defendant's expert testimony as to defendant's reasonable belief – which was not directly relevant to the offense, but the collateral matter bore a sufficiently close relationship to an element.[3] *United States v. Lankford*, 955 F.2d 1545 (11th Cir. 1992). Because the defendant in *Lankford* believed he was acting reasonable, and because the trial court allowed the government to offer expert testimony, the Eleventh Circuit found the trial court abused its discretion by "exclude[ing] otherwise admissible opinion of a party's expert on a critical issue, while allowing the opinion of his adversary's expert on the same issue." *Id.* at 1552.

Assuming *arguendo* that the 1994 seminar is a collateral matter which could explain or justify Schlosser's misguided belief that he was not subject to the tax laws of the United States, Schlosser was still not prevented from presenting this defense. Schlosser provided evidence at trial regarding the seminar and its content to rebut the Government's case against him. The jury heard full well about renouncing citizenship. Schlosser retold the story relating to the seminar at trial; thus, the introduction of reading materials and duplicative evidence clearly would not have produced a different result. Allowing Schlosser to introduce many documents from the 1994 seminar would impede the function and efficiency of this Court and be duplicative testimony.

[3] In *Lankford*, the defendant was charged with filing false income tax returns after not reporting a $1,500 check he received – which he asserted was a gift rather than taxable income. *U.S. v. Lankford*, 955 F.2d 1545 (11th Cir. 1992). The court concluded the expert's testimony was indirectly relevant because the testimony intended to explain the defendant's state of mind and whether he willfully violated the tax laws. *Id.* at 1551. The lower court determined that the tax expert offered by the defense would not be allowed to testify as to the reasonableness of the defendant's belief that the money was a gift and not taxable income which must be reported. *Lankford*, 955 F.2d at 1550. However, the Eleventh Circuit stated, the "[defendant's] expert's testimony revealed that a legitimate and well-founded legal analysis would have supported the reasonableness of that belief." *Id.*

Accordingly, this Court finds that Schlosser's constitutional rights were not violated and his motion for new trial is denied.

C. JUDGMENT OF ACQUITTAL REGARDING COUNT I

Rule 29 of the Federal Rules of Criminal procedure requires the court enter a judgment of acquittal of any offense "for which the evidence is insufficient to sustain a conviction." Fed. R. Crim. P. 29(a). The Third Circuit has stated, in reviewing the evidence in the light most favorable to the prosecution, a judgment of acquittal should be granted if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *United States v. Caraballo-Rodriguez*, 726 F.3d 418, 424-25 (3d Cir. 2013). In addition, the jury's findings must be afforded deference and all reasonable inferences must be drawn in favor of the verdict. *United States v. Riley*, 621 F.3d 312, 329 (3d Cir. 2010).

Schlosser argues that this Court should grant his motion for acquittal and enter a verdict of not guilty on Count I, interference with the administration of the internal revenue laws in violation of 26 U.S.C. § 7212(a). To prove a violation of 26 U.S.C. § 7212(a) ("Omnibus Clause"), the government must prove beyond a reasonable doubt that the defendant "corruptly endeavored to obstruct or impede the due administration of the Internal Revenue Code." *United States v. Marek*, 548 F.3d 147, 150 (1st Cir. 2008). Succinctly, a violation of the statute occurs when a defendant intends to impede the administration of tax laws.

Schlosser contends that the two expert witnesses produced by the government were insufficient for the jury to find him guilty of interfering with the administration of tax laws beyond a reasonable doubt. Schlosser complains that the IRS agents' testimony

that Schlosser made their jobs "harder to perform" did not amount to "obstructing or impeding the due administration of the tax laws." (ECF No. 62, at 15.) Taken together, along with all of the other evidence in the case, including the creation of the Corporate Soles and Business Trusts, and the gold-for-cash testimony of Leroy Glick and John Nolt, reasonable jurors could have, and did, infer that Schlosser interfered and obstructed with the administration of the tax laws of the United States. Thus, viewed in the light most favorable to the government and drawing all reasonable inferences in favor of the jury's verdict, the Court finds Schlosser's conviction on Count I is supported by sufficient evidence to find Schlosser was guilty of the offense.

III. CONCLUSION

Therefore, this Court will deny Schlosser's motion to arrest judgment (Docket No. 61), motion for a new trial (Docket No. 62), and motion for judgment of acquittal (Docket No. 62). Furthermore, the Court orders the Defendant to cease and desist from filing any further *pro se* motions, as he is represented by counsel.

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ORDER

AND NOW, this 12th day of May, 2017, upon consideration of Defendant James Kerr Schlosser's *pro se* Motion to Arrest Judgment (Docket No. 61), Motion for New Trial and Judgment of Acquittal filed by counsel of record (Docket No. 62), and a second *pro se* Motion to Arrest Judgment, Set Aside the Jury Verdict, and Vacate the Conviction (Docket No. 64), and all supporting and opposing papers, and for the reasons stated in the accompanying memorandum opinion, it is hereby **ORDERED** as follows:

1. The motion of Defendant James Kerr Schlosser (Docket No. 61) is **DENIED**;
2. The motion of Defendant James Kerr Schlosser (Docket No. 62) is **DENIED**;
3. The motion of Defendant James Kerr Schlosser (Docket No. 64) is **DENIED**.

BY THE COURT:

s/s JEFFREY L. SCHMEHL
Jeffrey L. Schmehl, J.